THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

W.P. No. 874 (M/S) of 2003 decided on 10.9.2003

(1) Balwant Singh Mehra
(2) Committee of Management, Shri Pooran Singh Mohan Singh Inter College, Haldwani

Vs.

(1) Director of Education (Secondary), Uttaranchal and four others

A.F.R. (approved for reporting)

~~Not approved for repor~~ting

Date Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.874 of 2003 (MS)

CIVIL SIDE

1. Balwant Singh Mehra
2. Committee of Management, Shri Pooran Singh Mohan Singh Inter College, Haldwani ……Petitioners

Versus

1. Director of Education (Secondary), Uttaranchal and others
2. Joint Director of Education Kumaon Mandal, Nainital
3. District Inspector of Schools, Nainital
4. Ram Singh Basera, alleged Manager, Committee of Management, Mohan Singh Pooran Singh Intermediate College Haldwani
5. State of Uttaranchal

..……..Respondents

Sri Sudhir Singh, Advocate for the petitioner
Sri R. Dobhal, Advocate for the respondents

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondent no.1 and 2 to take action under section 16-D (4) and appoint an Authorised Controller in the Institution in view of the fact that there is no scheme of Administration in the Institution.

Heard Sri Sudhir Singh for the petitioner and Sri Rajendra Dobhal for the respondents.

The grievance of the petitioner is that he is alleged himself to be the President of the Committee of Management of Shri Puran Singh Mohan Singh Inter College, Kunvarpur, Haldwani, District Nainital. It was stated that in the year 1980 the school was upgraded to the Intermediate and at that time Sri Gopal Singh Mehra did not bother to change the name of the Society/ school nor any Scheme of administration of the School was framed as required under the Intermediate Education Act. The petitioner has further alleged regarding certain frauds against the then Manager of the Committee of Management. It was also stated that the matter is also pending before the Registrar Chits, Funds and Societies under section 25 of Societies Registration Act.

The grievance of the petitioner is that since 1970 to 1991 Sri Gopal Singh Mehra acted as Manager of the committee of Management and from 1991 till 2002 Sri Ram Singh Basera acted as Manger of the Committee of Management without there being any election held between 1970 to 2002. The petitioners have sent representation to the appropriate authority on 31.7.2002, 6.8.2002, 21.8.2002, 30.1.2002 and 24.7.2002 but till today the same has not been considered hence the present writ petition has been filed.

Sri R. Dobhal has stated that District Inspector of Schools has already settled the dispute and the petitioner has no locus standi to file the present writ petition.

It has been held in the case of Committee of Management lakhori Inter College, Morabadabad and another vs. District Inspector of Schools, Moradabad as under:

Section 16-A (1) of U.P. Intermediate Education Act, 1921 provides that there shall be a Scheme of Administration for every institution. The Scheme of administration as provide in Section 16-A (1) shall, amongst other matters provide for constitution of a

committee of management vested with the authority to manage and to conduct the affairs of the institution."

The grievance of the petitioner is confined to the irregularities in the institution in respect of the scheme of Administration as well as constitution of a committee of management as contained in Section 16-A of U.P. Intermediate Education Act, 1921. It reads as under:

"Notwithstanding anything in any law, document, or decree or order of a Court of other instrument there shall be a Scheme of administration (hereinafter referred to as the Scheme of Administration) for every institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act 1958. The Scheme of Administration shall amo0ngst other matters provide for the constitution of a Committee of Management (hereinafter called the Committee of Management) vested with authority to manage and conduct the affairs of the institution. (The Head of the institution) and two teachers thereof, who shall be selected by rotation according to the seniority in the manner to be prescribed by Regulations, shall be ex officio members of the Committee of Management with a right to vote."

Sub section (5) provides that the same shall be subject to the approval of the District. It reads as under:

The scheme of Administration of every institution shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the Director:

Provided that where the Management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the Management, may, if it is

satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of the institution, order the Director to approve of the same, and thereupon the Director shall act accordingly.

However, in case of any dispute with regard to management of the institution, Regional Deputy Director of Education has been empowered to decide the controversy after giving an opportunity to the parties. Section 16-A (7) reads as under:

(7) Whenever there is dispute with respect to the Management of an institution, persons found by the Regional Deputy Director of Education upon such enquiry as it deemed fit to be in actual control of its affair may, for purpose of this Act, be recognised to constitute the committee of Management of such institution until a Court of competent jurisdiction directs otherwise:

Provide that the Regional Deputy Director of Education shall, before making an order under this sub section, afford reasonable opportunity to the rival claimants to make representation in writing.

Section 6-D further provides that the Director may direct a Management to remove any defect or deficiency found on inspection as otherwise. Clause (iii) and (vi) of Section 6-D provides as under:

(iii) any dispute with respect to the right claimed by different persons to be lawful office-bearers of the Committee of Management has affected the smooth and orderly administration of the institution concerned; or

(vi) The draft of the Scheme of administration has not been submitted within the time allowed therefore under Section 16-B, or that the Management of the institution is being conducted otherwise than in accordance with the Scheme of administration or the affairs of the institution are being otherwise mismanaged;

Under Article 226 of the Constitution of India it is not permissible to enquire upon the grievances of the petitioner when there is a forum under the U.P. Intermediate Education Act, to settle the dispute.

The petitioner has available with him the alternative remedy of expressing his grievances and for that purpose he has already made his representation and as such it will not be possible to exercise the jurisdiction under Article 226/227 of the Constitution of India. It has been held in the case Mani Subrat Jain etc. vs. State of Haryana and others AIR 1977 SC 276 that no mandamus can be claimed without a legal right. The Apex Court has held as under:

"The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something."

Thus no writ petition can be filed where no adjudication has taken place with regard to the legal rights of the petitioner in the appropriate forum.

During the course of arguments both the parties have agreed that the matter may be directed to be decided in accordance with Section 16-A of U.P. Intermediate Education Act, by the Regional Deputy Director of Education within a period of two months from the filing of the certified copy of the order.

Without expressing any opinion on the merit of the controversy in issue, the Regional Deputy Director of Education or any other Officer authorised to act in this regard is directed to decide the

representation of the petitioners within a period of two months after filing of the certified copy of the order.

The writ petition is disposed of accordingly.

(Rajesh Tandon, J.)

10.9.2003

Dhyani